



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 011] CHANDIGARH, THURSDAY, JANUARY 18, 2024 (PAUSA 28, 1945 SAKA)

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/63-HII(2)-2023/18814.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **4/2018 dated 04.10.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

NARINDER S/O SH. MUL CHAND R/O H.NO.92, VILLAGE KISHANGARH, U.T. CHANDIGARH. (Workman)

AND

1. M/S INFOSYS LIMITED, PLOT NO.1, RAJIV GANDHI CHANDIGARH, TECHNOLOGY PARK, CHANDIGARH - 160101 THROUGH ITS MANAGING DIRECTOR AND MANAGER.
2. M/S SUNRISE HOUSE KEEPING & SUPPORT SERVICES (P) LTD., SCO NO.18, FIRST FLOOR, SECTOR 16, PANCHKULA THROUGH ITS MANAGING DIRECTOR AND MANAGER. (Management)

AWARD

1. Narinder, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was engaged by M/s Sunrise House Keeping & Support Services Pvt. Ltd. i.e. management No.2 w.e.f. 02.01.2007 as Office Boy with various commitments. Management No.2 issued appointment letter dated 02.01.2007 and identity card to the workman. Management No. 2, being contractor, directed the workman to do work with M/s Infosys Limited / management No.1. The management No.1 / principal employer had appreciated his work & conduct, in fact the workman was designated as Storekeeper. The last drawn monthly wages of the workman were ₹16,819/-. The workman successfully performed his allotted duties as per the instructions of the managements. The workman was punctual and honest towards his duties. There was no single complaint towards his job. The managements were entirely satisfied with his work & conduct. Both the managements appreciated his work and many times awarded him with various certificates of excellence and thanks appreciation mails. The workman was working under the direct control & supervision of management No.1. On 28.12.2016 the workman reported for duty and did his routine work. Suddenly, in the store Mr. Devraj (Branch Manager) came present and shouted on the

Signature Not Verified
Digitally signed by
Jalinder Kumar
Date: 2024.01.18
15:20:40
Reason: Published
Locally

(143)

This is Digitally Signed Gazette. To verify, visit :
<https://egazette.chd.gov.in>

workman without any fault of him. In response, the workman requested Mr. Devraj to tell, what is his fault. Then Mr. Devraj shouted loudly at the workman and alleged that the workman is misbehaving with him. At the time of incident, the workman did not understand the condition and pre-planned incident but all the employees knew the behaviour of Mr. Devraj. Mr. Devraj is involved in many inquiries regarding various complaints filed against him by the employees. The workman needed job and fearing unemployment, the workman without having any fault, wrote apology letter to HR Manager. The workman faced discrimination being a contractual workman such as contract workman will not speak to anybody, will not go to drink water and will not go to toilet. These are conditions imposed on all the contractual workmen by the management being principal employer. Even more the managements threatened to all the employees that if anybody raised his voice against the management and try to give evidence against the managements in any matter then he / she will directly be terminated without giving any benefit of service. On 14.01.2017, the workman reported for duty but management No.2 refused to allow him duty. The workman requested various times to the managements that he did not hear his genuine request and did not allow him to join duty, thereafter, the workman submitted hand written complaint regarding his grievances to Assistant Labour Commissioner, Chandigarh but with the help of legal brain, the managements compromised the matter before the Assistant Labour Commissioner, U.T. Chandigarh and allowed him back on duty. The workman on the basis of said compromise, reported for duty but despite allowing him to report back on his duty, the managements with criminal intentions fight with the workman. To save his life, the workman fled away from the spot. On the said incident, having fear of life, the workman had moved a complaint to SHO, Sector 16, Panchkula against the management. There was another compromise executed between the workman and the managements that managements have cleared his all dues like three months wages, bonus, gratuity etc. and promised to give another service in Hon'ble High Court, Chandigarh. But all were bogus and fake compromise before the Police Officials. The managements are still running their factory / business. The managements have approximately more than 24 employees for manufacturing process where they use electricity. The managements have bad intention and deliberately showed minimum strength of employees in the original records with the aim to deprive the workmen from their legal rights under the Labour Laws and other liabilities. The managements have a record writer, who maintains record and keep it at unfounded place away from the factory. The managements have never been provided or allowed wages to the workman according to The Punjab Industrial Establishment National & Festival Holidays and Causal & Sick Leaves Act, 1965. The workman is entitled to 14 days sick leaves with wages, 7 days casual leaves, 15 days earned leaves with wages annually and the workman has never been issued leave card. No single penny has been given to the workman for his over time wages, which is violation of The Minimum Wages Act. The managements knowingly did not comply with the provisions of the concerned law during whole service of the workman and badly infringed legal right mentioned in the Labour Laws at the time of termination. The managements have misused the right and powers to conceal the fact from the Government Department. The services of the workman are uninterrupted and continues with the managements from the date of joining till termination, according to the provisions of Section 25-B of the ID Act. On 14.01.2017 the managements refused to allow duty to the workman without any of his fault, which is illegal on the grounds mentioned below :-

- a) The managements have not issued any memo, charge sheet and not conducted any inquiry against legal termination. The workman had made various verbal requests to the concerned officer to take him back on duty and also in writing but no single request was heard. The termination order has badly disturbed the family of the workman. After alleged termination the workman is facing all the difficulties of unemployed person. He and his family is at the stage of starvation. It is only by the illegal act & conduct on the part of the managements.
- b) According to pre-condition of Section 25-F of the ID Act, at the time of refusal of work to the workman, the managements never gave nor offered him notice pay and compensation. Therefore, refusal to work is illegal by all means.
- c) The managements neither paid nor offered notice pay in lieu of compensation to the workman. The job of the workman exists as it is till date and junior workmen to the workman are still retained in service by the managements which is violation of Section 25-F, 25-G & 25-H of the ID Act.

The managements intentionally denied to pay wages, over time allowance, leave with wages to create financial problem for the workman and his family. Details of payment amount due towards management is as under :-

Sr. No.	Particulars	Amount
1.	Leaves with wages which was not given (90 days)	₹ 50,448/-
2.	Minimum Bonus @ 8.33% from 01.04.2014 to 13.01.2017	₹ 39,000/-
3.	Gratuity amount according to Section 4 of the Gratuity Act	₹ 97,015/-
4.	Compensation according to Section 25-F of the ID Act	₹ 80,000/-
5.	Notice pay according to Section 25-F of the ID Act	₹ 16,819/-
6.	Over time 134 hours from 01.06.2016 to 13.01.2017 under Section 59 of the Factory Act, 1948	₹ 18,781/-
		₹ 3,02,063/-

It is further averred that verbal termination order is illegal, unjust, *malafide* and violation of all other provisions of the ID Act so the workman is entitled for the reinstatement with full back wages and continuity of service. Prayer is made that termination order may be declared illegal and services of workman be reinstated into service with continuity of service, full backwages and all other applicable consequential benefits.

3. On notice, management No.1 contested the claim statement by filing written statement dated 10.04.2018 filed on 03.05.2018. In the written statement preliminary objections are made that M/s Infosys Ltd. / management No.1 is a company incorporated under the Companies Act, 1956 and is engaged in providing global consulting and IT related services. The Board of Directors in their meeting held on 04.12.2014 resolved that Shri Suresh Shenoi shall *inter-alia* to appear and sign pleadings on behalf of the company i.e. Infosys Ltd. The written statement is accordingly signed by the authorised signatory on behalf of the Infosys Ltd. Infosys is a NYSE listed global consulting and IT services company with more than 1,98,000 employees. NR Narayana Murthy has written in his debut book 'A better India, a better World'. In this book he has written about the Infosys's vision and how they will achieve it. In the claim statement, the claimant has time again reflected that both the managements / opposite party are having some kind of association with each other and that the working of the first management is dependent on the working of the second management. It is denied at the outset that M/s Infosys Limited is having any control over the management and affairs of management No.1. M/s Infosys is a company engaged in providing global consulting and IT services to its customer throughout the length and breadth of this country. The management No.2 is happens to be a housekeeping and support service provider, whose functions *inter-alia* include keeping the premises clean, maintaining the premises, undertaking painting & polishing works, plumbing, sanitation, glazing, look after minor alterations and so on. The management No.2 is free to employ its own personnel, to train them and to depute them upon the premises of M/s Infosys Limited, in whatsoever manner it deemed fit and appropriate, so as to provide the above said services in the premises of M/s Infosys Limited. M/s Infosys Limited has executed an agreement to this effect with the management No.2 which laid down the relationship between both the parties. M/s Infosys Limited does not bear any further association with the management No.2. In fact, management No. 2 is a separate legal entity being a company registered under the Companies Act, 1956 and is having a separate Board of Directors and does not have any shared ventures with the answering management. The answering management does not have any control over the personnel employed by the management No.2. Neither does the answering management directly pay wages to the said employees nor it exercise a direct command over them. The relationship between management No.2 and the answering management begins from the date of execution of the agreement dated 10.06.2016 and it comes to an end upon the termination or expiry of the said agreement as well.

4. Further preliminary objections are raised on the ground that all the contentions taken by the workman may be deemed to be denied until specifically admitted by the answering management. The workman has not approached this Court with clean hands and suppressed material facts from this Court. The workman has

concocted a frivolous story to suit his own convenience and has raised unfounded and untenable arguments against the answering management. It is settled law that one who seeks equity must do equity. The workman by not only suppressing the material facts, but by also presenting the facts wrongfully has played a trick upon the Court. His claim statement requires to be dismissed on this short ground alone. The claim statement is miserably barred by limitation. The same requires to be dismissed on this short ground alone. The claim statement under reply is not liable to be entertained in the present form.

5. Further on merits, it is stated that the workman has been employed by M/s Sunrise House Keeping & Support Services Pvt. Ltd. The workman does not bear any direct relationship with the answering management. The relationship between both the managements is set out in the form of agreement dated 16.06.2017. There is only one employer in the picture i.e. M/s Sunrise House Keeping & Support Services Pvt. Ltd. The answering management is neither a principal employer nor an employer at all *vis-a-vis* with the workman. The workman may have been punctual and honest in his duties, however, he was frequently involved in altercations, heated arguments and verbal spat with various personnel working in the Infosys Premises. The workman did not show any respect even towards his seniors during such altercations. Over all, his attitude was arrogant and displeasing. It is absolutely false that he was working under the control & supervision of the answering management. Since some personal allegations have been levelled against Mr. Devraj, the answering management refrains from replying thereto, more so, because the said Mr. Devraj has not been impleaded as a party to the *lis*. However, Mr. Devraj, who is serving as Senior Executive in Infosys Ltd. is very dedicated and composed employee and all the allegations raised against him, at the best be called as baseless. No such discrimination, as alleged has been meted out ever towards anyone who has ever stepped into the Infosys premises. It is absolutely wrong that M/s Infosys ever denied duty to the workman. The workman was an employee of management No.2. Therefore, only management No.2 could control & supervise his activities. It is absolutely false that the workman was threatened or meted out with animosity ever by the answering management. Moreover, no FIR or complaint was ever lodged by the workman against the answering management which only shows that his belated allegations against the answering management are nothing but a creation of fiction. Even the alleged complaint is actually a letter seeking withdrawal of complaint and nothing else. The answering management is covered under the Punjab Shops & Establishment Act and is not a factory. The answering management has always complied with labour compliance in letter and spirit throughout the length and breadth of the country. The answering management is not deliberately showing minimum strength of employees with an aim to deprive them of their rights under the labour law. The answering management reserves its rights to separately deal with such unfounded allegations against the workman by filing a suitable *lis* in an appropriate Court of law. The answering management is not involved in either appointing the workman or in terminating his services in any manner whatsoever. The answering management is not involved in either permitting or restricting the activities of the workman. However, any directions issued by this Hon'ble Court shall be complied with in letter & spirits by the answering management. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with cost.

6. Management No.2 contested the claim statement by filing separate written statement dated 01.05.2018 filed on 30.05.2018, wherein preliminary objections are raised on the grounds that management No.2 is a service providing agency, having its registered office at Panchkula but rendering house-keeping and allied services on contract basis to number of clients all over India. Wherever such services are to be provided, staff is deputed to work at the premises of concerned client but the salary / wages are paid by management No.2. Under the contract agreement, services to the satisfaction of the client have to be provided and if there is any lapse or negligence in rendering of services, the service contract can be terminated. So the employees of management No.2 have to be very efficient and alert in rendering of the services while working at the premises of the clients. In service industry, client is the master and the service provider / management No.2 cannot afford to annoy his valued client like Infosys at any cost, otherwise the contract of providing the services can be terminated. The workman is the employee of management No.2 and was deputed to work at the premises of management No.1 i.e. M/s Infosys, IT Park, Chandigarh. The workman while working at the premises of management No.1 was found negligent in performance of duties. Accordingly, letter of warning dated 14.04.2016 was issued to be careful in future. The workman while working at the premises of management No.1, misbehaved with Shri Devraj, an employee of management No.1 on 28.12.2016. The whole incident of misbehaviour had

happened in the presence of Shri Deer Kumar, who has narrated the whole incident by way of written complaint dated 28.12.2016. Because of said misbehaviour of the workman with Shri Devraj, letter of warning dated 31.12.2016 was issued to the workman and he was also asked to submit his written explanation within two days. Since the workman refused to accept the said letter, it had to be sent to his residential address at HN-92, Kishangarh, Chandigarh by registered post but the same has been received with the remarks '*that no such person lives there*'. A domestic / internal inquiry was got conducted about the said act of mis-behaviour and the workman was found guilty of misconduct. On the basis of above domestic inquiry, a final warning letter dated 05.01.2017 was issued to the workman and this time it was sent by a registered post at his permanent address of District Jind in Haryana as well as at Chandigarh address but both said registered letters have been received back with the remarks '*that the addressee has refused to accept the letter / not living there*'. The workman had not submitted his written explanation and the client M/s Infosys / management No.1 also refused to allow him to work in their premises, there was no other option but to transfer the workman. Accordingly, vide letter dated 11.01.2017, the workman was transferred from M/s Infosys to M/s MGF, Mohali and the said letter was sent by registered post at his permanent address of District Jind in Haryana as well as at Chandigarh address but both the letters have been received back with the remarks '*that the addressee has refused to accept the letter / not living there*'. However, the workman did not join there. Vide letter dated 24.01.2017, the workman was informed that he has not joined the duty at new place of transfer i.e. M/s Emaar MGF and the said letter was sent by registered post at his Chandigarh address but the said registered letter has also been received back with the remarks '*that the addressee does not live there*'. Vide another letter dated 22.03.2017, the workman was informed that w.e.f. 22.03.2014, his services have been transferred to sister concern with the name M/s Sunrise Integrated Facility Pvt. Ltd. and he would be paid ₹ 16,495/- per month as remuneration. However, the workman neither received the transfer letter nor joined at his transferred place. Till date the workman has neither joined at the premises of M/s MGF Mohali nor he has joined at the premises of the sister concern with the name M/s Sunrise Integrated Facility Pvt. Ltd. The workman is neither giving explanation for the misbehaviour with the staff of management No.1 nor joining at new place of transfer. The workman is only busy in submitting demand notices and making false complaints. The workman has already been paid full wages of ₹16,819/- for the month of December, 2016, ₹ 11,236/- for the month of January 2017. However, no wages have been paid to him from March 2017 onwards as the workman has neither joined at new place nor performed any work. For the payment of pending dues of the workman and his gratuity, 3 cheques have been prepared but the workman is not coming forward to collect these cheques. The details of the cheques are as below :-

- a) Cheque No.941345 dated 29.08.2017 for ₹ 13,601/-
- b) Cheque No.941343 dated 29.08.2017 for ₹ 80,769/-
- c) Cheque No.941344 dated 29.08.2017 for ₹ 5,693/-

As alleged by the workman, his services have not been terminated but he has simply been transferred on the basis of complaints with continuity of services and with same salary / wages.

7. Further on merits, it is stated that the fact that the workman was engaged by the management No.2 vide appointment letter dated 02.01.2007 and identity card was issued to him by management No.2 and further the fact that management No.2 deployed the workman to work at the premises of management No.1 is a matter of record. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of the claim statement are denied as wrong. It is stated that the workman has concealed the fact that he himself has not joined the new place of transfer. His transfer was required because of complaints of the client about his conduct and working. His services have not been terminated but he has only been transferred that too locally only, without any break of service. Prayer is made that the claim may be dismissed.

8. The workman filed separate rejoinders to the written statement of management No.1 & 2, wherein the contents of the respective written statement except admitted facts, are denied as wrong and averments of claim statement are reiterated.

9. From the pleadings of the parties, following issues are framed vide order dated 04.02.2019 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by limitation ? OPM
3. Relief.

10. In evidence, workman Narinder examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'A1' to 'A12'.

Exhibit 'A1' is photocopy of appointment letter dated 02.01.2007 issued to Narinder by the authorised signatory of Sun Rise House Keeping & Support Services (P) Ltd.

Exhibit 'A2' is photocopy of identity card of Narinder (incorporating his designation as Office Boy) issued by Sun Rise Housekeeping & Support Services Pvt. Ltd.

Exhibit 'A3' is photocopy of temporary identity card relating to Pass Holder Narender bearing date of issue 01.04.2016, valid up to 31.03.2017 of Rajiv Gandhi Chandigarh Technology Park, Kishangarh, Chandigarh issued by Sun Rise Housekeeping & Support Services Pvt. Ltd.

Exhibit 'A4' & Exhibit 'A5' are photocopies of appreciation letters dated 30.06.2016 & 20.08.2014 respectively issued by Sun Rise House Keeping & Support Services (P) Ltd.

Exhibit 'A6' is photocopy of certificate of participation relating to Narinder Kumar as he was part of volunteer's team for UDDAN 7.0 in the year 2013-14 issued by Vikas Ahuja, Head - Chandigarh DC.

Exhibit 'A7' is photocopy of certificate of excellence awarded to Narendra Kumar for significant contribution towards the Spark programme in 2011-12 issued by Vikas Ahuja, Delivery Manager, Mobility & Head, Chandigarh DC Infosys Ltd.

Exhibit 'A8' is photocopy of certificate of appreciation awarded to Narendra Kumar for contribution towards a successful Environmental Management System re-certification audit for OHSAS 18001:2007 and ISO14001:2004 Standard at Chandigarh DC on 05.03.2010 issued by Vikas Ahuja - DC Head, Chandigarh Development Centre.

Exhibit 'A9' is photocopy of letter dated Nil addressed from Narender Kumar, Employee No.10102393 Storekeeper to Manager (HR), Infosys Ltd., Chandigarh whereby he tendered pardon and apologies for his mistakes, if any.

Exhibit 'A10' is photocopy of letter addressed from Narinder Kumar to Assistant Labour Commissioner, U.T. Chandigarh.

Exhibit 'A11' is photocopy of application dated 24.03.2017 addressed from Narinder Kumar to Incharge Police Post, Sector 16, Panchkula seeking to file the complaint moved by him on account of compromise.

Exhibit 'A12' is photocopy of postal receipt dated 01.08.2017. On 06.02.2023 workman closed his evidence in affirmative.

11. It is pertinent to mention here that management No.2 had put documents Annexure 'W4' (appointment letter dated 02.01.2007), Annexure 'W7' (apology letter), Annexure 'R2/3' (warning letter dated 31.12.2016), Annexure 'R2/4' (report of domestic inquiry relating to contractual employee Narinder Kumar, held on 02.01.2017 by Mr. Arvind and Mr. Deepak from Sun Rise Housekeeping & Support Services Pvt. Ltd.), Annexure 'R2/5' (final warning letter dated 05.01.2017) and Annexure 'R2/10' (transfer order dated 22.03.2017 relating to Narinder) to AW1 Narinder in his cross-examination.

12. On the other hand, management No.1 examined MW1 Puneet Randhawa - Senior Regional Head - Facilities, Infosys Ltd., Rajiv Gandhi Technology Park, Kishangarh, Chandigarh who tendered his affidavit

Exhibit 'MW1/A' along with documents i.e. Board Resolution dated 19.04.2017 passed by Executive Directors vide **Exhibit 'M1/1'** and agreement dated 16.06.2017 executed between M/s Infosys Ltd. and M/s Sun Rise Housekeeping & Support Services Pvt. Ltd. vide **Exhibit 'M1/2'**.

13. Management No.2 examined MW2 Satya Paul - Manager HR, Sun Rise Housekeeping & Support Services Pvt. Ltd, who tendered his affidavit Exhibit 'MW2/A' along with photocopy of documents Exhibit 'M2/1' to Exhibit 'M2/15'.

Exhibit 'M2/1' is letter of warning dated 14.04.2016.

Exhibit 'M2/2' is letter of warning dated 31.12.2016 along with undelivered postal envelop bearing postal endorsement '*in No.92 no person of such name resides*' vide **Exhibit 'M2/3'**.

Exhibit 'M2/4' is report dated 02.01.2017 jointly made by Shri Arvind Kumaria, Manager Administration and Shri Deepak Sharma, Manager, Operations relating to incident dated 28.12.2016.

Exhibit 'M2/5' is final warning letter dated 05.01.2017 addressed to workman at his address of Village Thua, Tehsil & District Jind, Haryana along with registered post envelop bearing postal receipt dated 07.01.2017 and postal endorsement that '*addressee resides away from the given address and refused to receive*' **Exhibit 'M2/6'**

Exhibit 'M2/7' is final warning letter dated 05.01.2017 addressed to workman on his address of House No. 92, Kishangarh, Chandigarh along with postal envelop bearing postal receipt dated 07.01.2017 '*in No.92 no person of such name resides*' **Exhibit 'M2/8'**.

Exhibit 'M2/9' is transfer letter dated 11.01.2017 addressed to workman at his address of Village Thua, Tehsil & District Jind, Haryana along with registered post envelop bearing postal receipt dated 13.01.2017 and postal endorsement that '*addressee resides away from the given address and refused to receive*' **Exhibit 'M2/10'**.

Exhibit 'M2/11' is transfer letter dated 11.01.2017 addressed to workman on his address of House No. 92, Kishangarh, Chandigarh along with undelivered postal envelop bearing '*addressee resides away from the given address and refused to receive*' **Exhibit 'M2/12'**.

Exhibit 'M2/13' is letter dated 24.01.2017 along with undelivered postal envelop '*in No.92 no person of such name resides*' **Exhibit 'M2/14'**.

Exhibit 'M2/15' is transfer order dated 22.03.2017 along with photocopies of cheque No. 941345 dated 29.08.2017 for sum of ₹ 13,601/-, cheque No. 941343 dated 29.08.2017 for sum of ₹ 80,769/-, cheque No. 941344 dated 29.08.2017 for sum of ₹ 5,693/-, all in favour of workman issued by authorised signatory of Sunrise House Keeping Support Services Pvt. Ltd., drawn on Canara Bank (name of bank not legible) **Mark 'A' to Mark 'C'** respectively.

It is pertinent to mention here that original of Exhibit 'M2/1' to Exhibit 'M2/15' were shown and returned.

14. Management No.2 examined MW3 Deep Kumar S/o Situ Ram R/o House No. 1810, Phase - II, Ram Darbar, Chandigarh, Supervisor House-keeping deputed at Infosys, IT Park Chandigarh who tendered his affidavit Exhibit 'MW3/A'.

15. On 03.07.2023 Learned Representative for management No. 2 closed the evidence. On 04.10.2023 Learned Representative for management No.1 closed the evidence.

16. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise finding are as below :-

Issue No. 1 :

17. Onus to prove this issue is on the workman.

18. Under this issue the workman Narinder examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity. AW1 supported his oral version with the documents Exhibit 'A1' to Exhibit 'A12'.

19. On the other hand, management No.1 examined MW1 Puneet Randhawa - Senior Regional Head - Facilities, Infosys Ltd., Chandigarh, who tendered his affidavit Exhibit 'MW1/A' wherein he deposed the entire material contents of the written statement of management No.1 and supported his oral version with documents Exhibit 'M1/1' and Exhibit 'M1/2'. Management No.2 examined MW2 Satya Paul - Manager HR, Sun Rise Housekeeping & Support Services Pvt. Ltd., who vide his affidavit Exhibit 'MW2/A' deposed the entire contents of the written statement filed by management No.2 and supported his oral version with documents Exhibit 'M2/1' to Exhibit 'M2/15' and Mark 'A' to Mark 'C'. Management No.2 also examined MW3 Deep Kumar - Supervisor House-keeping deputed at Infosys, Chandigarh, who vide his affidavit Exhibit 'MW3/A' deposed that he is the employee of M/s Sunrise Housekeeping & Support Services Pvt. Ltd and he has been deputed to work at the premises of M/s Infosys, IT Park, Chandigarh for the last so many years. Sh. Narinder Kumar, employee of M/s Sunrise Housekeeping & Support Services Pvt. Ltd. had also been deputed to work at the premises of M/s Infosys, IT Park, Chandigarh. He further deposed that on 28.12.2016, while working at the premises of M/s Infosys, IT Park, Chandigarh, Sh. Narinder Kumar had a quarrel with Sh. Dev Raj an employee of M/s Infosys. The dispute was regarding the replacement of the urinal mats in the toilets. The urinal mats were more than 30 days old and normally they replace the urinal mats after every 15 days. Dev Raj asked him (MW3) to replace the urinal mats. Since, Sh. Narinder Kumar was having the urinal mats in his custody he refused to give me the urinal mats for replacement. Sh. Narinder Kumar even shouted at him as to who is Dev Raj. Sh. Dev Raj enquired from him (MW3) as why the urinal mats have not been replaced. He informed Sh. Dev Raj that Sh. Narinder has refused to give him the new urinal mats for replacement. Dev Raj also asked Narinder to give the toilet mats but he refused to give and misbehaved and shouted at him. He tried to pacify Narinder that he should not lose his temper. Narinder did not care at all. Rather, he threw his I/Card on the table of Dev Raj and shouted that he do not want to work there anymore. Thereafter he left the premises of Infosys.

20. From the oral as well documentary evidence led by the parties, it comes out that the workman Narinder Kumar was appointed vide appointment letter dated 02.01.2007 / Exhibit 'A1' by Sun Rise Housekeeping & Support Services Pvt. Ltd. (herein management No.2) and was deployed to work as Office Boy with M/s Infosys Ltd., Rajiv Gandhi Technology Park, Chandigarh (herein management No.1) and his monthly remuneration / wages were ₹ 16,819/- per month. The workman being contractual employees remained in continuous & uninterrupted service of management No.2 from the date of appointment i.e. 02.01.2007 to 27.12.2016. During the said period the workman continuously remained deputed with management No.1. In this regard MW1 Puneet Randhawa, in his cross-examination stated that para No.1 of the claim statement is admitted to the extent of his appointment with management No.2 and that he was deployed in the office of management No.1. MW1 in his cross-examination further admitted as correct that the workman remained continuously deputed with management No.1 from 02.01.2007 to 27.12.2016.

21. As far as relationship of workman with management No.1 & 2 is concerned, management No.1 is the principal employer and management No.2 is the contractor. In the present case, AW1 Narinder when put to cross-examination by management No.1 stated that there is no appointment letter issued to him by M/s Infosys Ltd. AW1 voluntarily stated that management No.2 was contractor and he was deputed for M/s Infosys. MW1 Puneet Randhawa in his cross-examination conducted by Learned Representative for the workman stated that management No.1 had no supervision over the workman. MW1 in his cross-examination further stated that management No.1 never changed designation of the workman. Management No.1 directly never changed the nature of work of any contractual employee. Management No.1 used to communicate to the management No.2 for his requirement of work and it was management No.2, who used to deploy the worker / workers and assign duties to him / them. From the aforesaid version of AW1 and MW1, it is duly established on record that there was no direct employer-employee relationship between management No.1 and the workman. The expression 'control and supervision' in the context of contract labour has been explained by the Hon'ble Apex Court of India in **International Airport Authority of India Versus International Air Cargo Workers' Union reported in (2009) 13 SCC 374** in para38 and 39 held as below :-

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the

salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

In view of the aforesaid judgment, which is applicable to the facts of the present case to an extent, the workman is direct employee of the contractor i.e. M/s Sun Rise Housekeeping & Support Services Pvt. Ltd. and the control of principal employer i.e. M/s Infosys Limited is secondary in nature as control over the workman is exercised by M/s Infosys Limited only after the workman has been assigned to the principal employer to do a particular work.

22. In the present case the workman has challenged the order of termination of his services. The workman Narinder in his affidavit Exhibit 'AW1/A' alleged that on 28.12.2016 he reported for duty but the management officer Shri Dev Raj - Branch Manager refused to allow duty without any fault of the workman. On the other hand, management No.1 has alleged that the workman was frequently involved in altercations, heated arguments and verbal spat with various personnel working in the Infosys premises. The workman did not show any respect even towards his senior during such altercations. Over all attitude of the workman was arrogant and displeasing. Management No.2 has alleged while working at the premises of management No.1, workman misbehaved with Shri Dev Raj, an employee of management No.1 on 28.12.2016. The said incident of misbehaviour took place in the presence of Shri Jeet Kumar - Supervisor, who reported the same by way of written complaint dated 28.12.2016. Because of said mis-behaviour of the workman with Shri Dev Raj, management No.2 issued a warning letter dated 31.12.2016 / Exhibit 'M2/2' to the workman and after conducting domestic inquiry vide inquiry report dated 02.01.2017 / Exhibit 'M2/4' found the workman guilty of the misconduct. Thereafter, final warning letter dated 05.01.2017 / Exhibit 'M2/5' was issued to the workman through registered post on his permanent address of District Jind in Haryana vide Exhibit 'R2/6' and local address of Chandigarh vide Exhibit 'R2/7' but both the said letters were received back undelivered with the postal endorsement '*prapatkarta diye patte ke bahar rahta hai lene se inkar*' and '*92 No. mein iss naam ka nahi hai*' as per Exhibit 'M2/6' and Exhibit 'R2/8' respectively. The aforesaid plea taken by the management No.2 stands duly proved from the cross-examination of the workman / AW1, who in his cross-examination conducted by management No.2 stated that his permanent address is Village Thua, District Jind, Haryana. His local address is House No.92, Kishangarh, U.T. Chandigarh. AW1 further stated that on 28.12.2016 no dispute occurred with Shri Dev Raj, employee of the Infosys where he was posted. AW1 when put to cross-examination by management No.1, stated that Shri Dev Raj is not working with the management No.2. AW1 further stated that he does not have any document to show today that Shri Dev Raj is an employee of M/s Infosys Ltd. The plea taken by the workman that on 28.12.2016 no dispute occurred with Shri Dev Raj, employee of Infosys stands falsified from the apology letter placed on record by him vide Annexure 'W7' / Exhibit 'A9' wherein the workman contended that he had discussion with Shri Dev Raj regarding some articles, copy of which is enclosed with the letter. Shri Dev Raj is at fault and his (Narinder Kumar) only fault is that he speaks truth as a result of which he has been turned out from the company after insulting him. To the contrary they have misbehaved with him. From the aforementioned contents, it is made out that some dispute has taken place in the premises of M/s Infosys Ltd. between the workman and Shri Dev Raj. In letter Exhibit 'A9', the workman had tendered his

apology with request to give him one opportunity and he will not commit any mistake in future. From letter dated 14.04.2016 / Exhibit 'M2/1', it is duly proved on record that even prior to incident dated 28.12.2016, workman was issued warning in writing regarding the incident which took place on his deployment site Infosys Ltd. Vide warning letter the workman was given one last chance to improve himself. After the incident dated 28.12.2016 the workman was again issued warning letter dated 31.12.2016 / Exhibit 'M2/2' regarding his misconduct and final warning letter dated 05.01.2017 / Exhibit 'M2/5'. The plea of the workman that the said warning letter were never communicated to him stands falsified from the fact that the workman has not disputed his permanent address of Village Thua, Tehsil & District Jind, Haryana and his local address of House No.92, Kishangarh, Chandigarh. The warning letter dated 31.12.2016 was issued on the local address of Chandigarh to the workman which was received back undelivered that no person of such name resides at the given address. The warning letter dated 05.01.2017 / Exhibit 'M2/5' was issued to the workman on both his addresses of District Jind and of Chandigarh. The letter posted on the address of District Jind, Haryana vide postal receipt dated 07.01.2017 was received back undelivered with the postal endorsement vide Exhibit 'M2/6' that addressee does not reside at the given address and the letter posted at the local address of Chandigarh vide postal receipt dated 07.01.2017 / Exhibit 'M2/8' was received back undelivered with the postal endorsement that no person of such name resides at House No.92. It is not the case of the workman that he had supplied his any other address for correspondence to management No. 2. Above all there is no letter of termination showing that management No.2 terminated the services of the workman. From transfer letter dated 11.01.2017 / Exhibit 'M2/9' it is proved on record that services of the workman were not terminated rather he was transferred from Infosys Ltd., Chandigarh to MGF Mohali with direction to report on duty on 16.01.2017 with reporting person Mr. Jatinder Singh (site In-charge). In the transfer letter the mobile contact number of the Site In-charge was also provided. The transfer letter Exhibit 'M2/11' was again issued to the local address of Village Kishangarh, Chandigarh vide postal receipt dated 13.01.2017 which was received back undelivered vide postal endorsement Exhibit 'M2/12' that no person of such name resides at House No. 92. Since the workman failed to report on duty at MGF Mohali, thus the management No.2 again requested the workman to report on duty as soon as possible vide letter dated 24.01.2017 / Exhibit 'M2/13' which was posted to the workman on his local address of Kishangarh, Chandigarh vide postal receipt dated 24.01.2017 but it was received back undelivered vide postal endorsement Exhibit 'M2/14' that no person of such name resides at House No. 92. Since, the workman failed to join his duty at MGF Mohali, thus management No.2 issued letter dated 22.03.2017 / Exhibit 'M2/15' to the workman whereby he was transferred to M/s Sun Rise Integrated Facility w.e.f. 22.03.2017 with the enumeration of ₹16,495/- (cash in hand). AW1 in his cross-examination stated that warning letters dated 31.12.2016 and final warning letter dated 05.01.2017 as per Annexure 'R-2/3' and Annexure 'R-2/5' were rightly sent at his local Chandigarh address and permanent address of Jind Haryana but it was not received as he was on job at Infosys at that time. The transfer letter dated 11.01.2017 and 24.01.2017 sent by registered post at his permanent address of Jind, Haryana and local address of Chandigarh have not been received by him. As already discussed above, the transfer order were communicated to the workman at his given address. If for certain reasons the given address of District Jind and of Chandigarh are incorrect or changed by the workman, then it was the duty of the workman to supply his recent address of correspondence to his employer but the same has not been done. Therefore, non-delivery of letters issued through post to the workman is due to workman's own fault and the management cannot be held responsible for the same.

23. In view of the reasons recorded above, it is duly proved into evidence that whenever workman performed his duties up to the mark he was issued appreciation letter and whenever the workman committed any mistake or misconduct he was issued warning letter. It was on account of complaint against his conduct, the

workman was transferred initially vide order dated 11.01.2017 from Infosys Ltd. with direction to join on 16.01.2017 with MGF Mohali where the workman did not join duty. When the workman did not comply with transfer order dated 11.01.2017 then vide order dated 24.01.2017 the workman was directed to report on duty as soon as possible, but the workman failed to join duty. The workman then transferred vide order dated 22.03.2017 to M/s Sun Rise Integrated Facility w.e.f. 22.03.2017 where the workman again failed to join duty. Moreover, as per the terms & conditions of the appointment letter, it is within the domain of the contractor / company (herein management No.2) to transfer the contractual employee to any of its department / offices or to depute him to group companies, anywhere in India. Condition No.9 of appointment letter / Exhibit 'A1' is reproduced as below :-

"9. You will be bound by the rules of the company. The company shall have the right to transfer you to any of its department / offices or depute you to group companies, anywhere in India."

24. In the present case, the management No.2 in exercise of the power conferred under Condition No.9 of appointment letter Exhibit 'A1' has transferred the workman. Furthermore, the workman cannot insist the contractor to deploy him with Infosys Ltd. only. It is for the contractor to see where the workman is required to be deployed. When put to cross-examination by the workman MW2 Satya Paul stated that the company is ready to take back the workman on duty against the vacancy lying vacant in any other organisation except Infosys as no vacancy is vacant there. Consequently, provisions of Section 25-F of ID Act is not attracted as the present case is of transfer and not termination.

25. Accordingly, this issue is decided against the workman and in favour of the managements.

Issue No. 2 :

26. Onus to prove this issue is on management.

27. The workman remained in continuous employment of management No.2 w.e.f. 02.01.2007 till his transfer order dated 11.01.2017. The workman raised the demand notice dated 01.08.2017. On failure of conciliation proceedings with respect to demand notice vide memo endorsement No.4627 dated 05.09.2017 of ALC-cum-Conciliation Officer, U.T., the present Industrial Dispute Reference was received on 01.02.2018. Thus, the present industrial dispute reference is well within the limitation period.

28. Accordingly this issue is decided against the managements and in favour of the workman.

Relief :

29. In the light of findings on the issue No.1 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 04.10.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/70-HII(2)-2023/18816.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **33/2022 dated 03.10.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SHREEDHAR TIWARI, H.NO.105, SARANGPUR, U.T. CHANDIGARH. (Workman)

AND

PARACHEEN SHIV MANDIR SARANGPUR, U.T. CHANDIGARH. (Management)

AWARD

1. Shreedhar Tiwari, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 06.02.2001 the claimant-workman was appointed by the management as Pujari in the Mandir. The claimant-workman remained in the continuous employment up to 03.12.2021, when his services were illegally & wrongfully terminated by refusal of work. The claimant-workman was getting ₹ 5,000/- per month as wages plus residential accommodation at Mandir premises. On 03.12.2021, the management misbehaved with the claimant-workman and ordered him to leave the Mandir premises immediately. The management also refused him work on the pretext that the services of the claimant-workman are no more required. At the time of termination, the earned wages of the claimant-workman for the period January to November 2021 were due and for the realisation of unpaid wages, the claimant-workman used to ask for but the same was refused to the claimant-workman on pretext or the other. The regular demand of unpaid wages was the main cause of termination. For realisation of his demand of reinstatement the claimant-workman lodged a complaint with the Labour Inspector, U.T. Chandigarh. Since his termination the claimant-workman has been regularly visiting the Mandir but the claimant-workman was refused work and payment of due wages on one pretext or the other. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F and 25-G of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. The management has also retained junior person in service when the services of the claimant-workman were terminated which is violation of Section 25-G of the ID Act. Violation of the same makes the termination void. For his re-instatement claimant-workman served upon the management a demand notice dated 20.10.2021. The management neither replied the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner (ALC)-cum-Conciliation Officer, U.T, Chandigarh was requested for his intervention. The Assistant Labour Commissioner intervened but no settlement could be made possible during the stipulated period. The termination by the management is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The claimant-workman remained unemployed during the period i.e. from the date of termination till date. Prayer is made that the claimant-workman may be re-instated with continuity of service along with full back wages and without any change in his service conditions.

3. On notice, management contested the claim statement by filing written statement on 17.11.2022 wherein preliminary objections are raised on the grounds that the claimant-workman has not approached the Court with clean hands and concealed material facts. In fact, about 35-40 years ago, a small Paracheen

Shiv Mandir was built by the villagers on the common land of Village Sarangpur and villagers were taking care of the Mandir at their own with their own contributions / offerings. In the year 2001, the claimant was asked by the villagers to take care of the Mandir and was not paid any remuneration by the villagers. The claimant used to perform religious functions also at the residence of the villagers like performing marriage function, Havans, Kirya ceremonies, Garud Puran Katha etc. and earn from these ceremonies. In the year 2013, the villagers formed a Mandir functioning committee and the signatory of this written statement has been chosen as the President of this committee. The claimant was given a small room in the Mandir premises to take care of the Mandir, rest of the work was done by the villagers on volunteer basis. The Mandir is not doing any activity to earn any profit. The claim is not maintainable before this Court as claimant is not a 'workman' in terms of Section 2(s) of the ID Act. The management is not an 'industry' in terms of Section 2(j) of the ID Act. The claimant has concealed the fact that claimant along with his family has approached the Hon'ble High Court by filing CRWP No.620 of 2021 for protection of life and liberty at the hands of villagers of Sarangpur, including the signatory of this written statement, wherein false allegation has been levelled against the villagers and signatory of this written statement.

4. Further on merits, it is stated that the claimant was never appointed by the answering management. It is categorically denied that the claimant was getting monthly wages of ₹ 5,000/-. No one mis-behaved with the claimant. The claimant was irregular and was devoting more time in performing marriage functions, Havans, Kirya ceremonies, Garud Puran Katha etc. was not taking interest in the religious activities at Mandir. Claimant was not paid any wages, hence, no question of payment of any wages for the period January 2021 to November 2021 and no question of any demand of wages arise. It is denied for want of knowledge that the claimant-workman lodged a complaint with Labour Inspector, U.T. Chandigarh. The claimant was never denied work, rather claimant started taking least interest in the Mandir activities. The claimant is not a 'workman' in terms of Section 2(s) of the ID Act and management is not a 'industry' in terms of Section 2(j) of the ID Act. Hence, any provision of the ID Act has not been violated by the management. Further, similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with cost.

5. The claimant-workman filed rejoinder, wherein the contents of the written statement except admitted facts, are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 19.12.2022 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is roved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits ? OPW
3. Whether the workman has not approached the Court with clean hands and concealed the material facts ? OPM
4. Whether the management is not an 'industry' in terms of Section 2(j) of the ID Act ? OPM
5. Whether the statement of claim is not maintainable ? OPM
6. Relief.

7. In evidence, the claimant-workman Shreedhar Tiwari examined himself as AW1, who vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto. On 26.05.2023 claimant-workman closed his evidence in affirmative.

8. On the other hand, management examined MW1 Harjinder Kumar, R/o House No.27, Village Sarangpur, U.T. Chandigarh, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement. On 01.08.2023 Learned Representative for the management closed oral evidence. On 03.10.2023 Learned Representative for the management closed documentary evidence.

9. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 4 :

10. This issue has been taken up first as it goes to the root of the case.

11. Onus to prove issue No.4 is on the management.

12. Learned Representative for the management argued that the management is a small Mandir namely Paracheen Shiv Mandir, which was built by the villagers of village Sarangpur on a common land of the village about 30-40 years ago. In the year 2013, the villagers formed a Mandir Functioning Committee and chosen Harjinder Kumar as President of this committee. In the year 2001, claimant was asked by the villagers to take care of the Mandir and no remuneration was paid by the villagers to the claimant-workman. However, the claimant-workman was given a small room in the Mandir premises to take care of the Mandir. The remaining work of the Mandir is done by the villagers on volunteer basis. The claimant-workman earns money by performing ceremonies of marriage, Havans, Kirya and Garud Puran Katha etc. at the residence of villagers. Since the Mandir is not doing any activity to earn any profit, thus Mandir does not fall within the definition of 'industry' in term of Section 2(j) of the ID Act.

13. On the other hand, Learned Representative for the claimant-workman argued that the claimant-workman was Pujari in the Mandir, who was paid ₹ 5,000/- as monthly wages and was also given residential accommodation at the Mandir premises. It is further argued by Learned Representative for the claimant-workman that it is not believable that any person would render service of Pujari of the Mandir without any wages or remuneration. Moreover, the Mandir had income from the offerings which also include money. To support his arguments Learned Representative for the claimant-workman referred cross-examination of MW1 wherein he admitted as correct that all the offerings including money belongs to the Mandir Functioning Committee.

14. There is no dispute between the parties with regard to the fact that in the year 2001 claimant-workman was allowed by the villagers of village Sarangpur to take care of Mandir and for that purpose the claimant-workman was provided an accommodation in the Mandir premises to stay there. The claimant-workman did not bring any evidence to show that the Mandir or Mandir Functioning Committee was paying any monthly wages to him. From the cross-examination of MW1 referred by the Learned Representative for the claimant-workman, no inference can be drawn that the Mandir carried out the activities for the purposes other than religious purpose. In the Mandir the services rendered are purely religious in nature. Since the Mandir does not fall within the definition of 'industry' as defined under Section 2(j) of the ID Act, therefore, the Pujari of the Mandir would not be considered as 'industrial labour'. Hon'ble High Court of Karnataka in **Radhakrishan Bhakta Versus Subramanya Shastri & Another** reported in **2006 LAB I. C. 482 (Karnataka) (DB)** held as below :-

"3. We have heard learned counsel for the parties and are of the view that the writ appeal deserves to succeed. Having regard to the definition of 'industry' in clause (j) of Section 2 of the Act we are of the view that any activity which could be described as an industry has to be either trade or business or any other activity analogous thereto. A temple which is visited by the devotees by reason of faith cannot by any process of reasoning be said to be an activity analogous to trade or business. We are of the view that the State Government was right in declining the reference. While doing so it relied upon a judgment of the Kerala High Court in a Kesava Bhatt v. Sree Ram Ambalam Trust, (1990) 1 Lab LJ 192 : (1990 Lab IC NOC 104) wherein Archak or a priest in a temple was held not to be a 'workman' within the meaning of the Act as he cannot be said to be doing any manual or clerical services to

the devotees of the temple. The temple was held not to be an industry within the meaning of clause (j) of Section 2 of the Act. We have carefully gone through this judgement and are in agreement with the reasoning of the learned single Judge."

15. In the light of above judgment, the management does not fall within the definition of 'industry' under Section 2(j) of the ID Act.

16. Accordingly, this issue is decided in favour of the management and against the claimant-workman.

Issue No. 1 & 2 :

17. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 & 2 is the claimant-workman.

18. As per the judgment of *Hon'ble High Court of Punjab & Haryana passed in CWP No.18958 of 1996 titled as Ashok Khanna Versus M/s TTK Pharma Limited & Others, decided on 01.07.2009*, once the Court has reached to the conclusion that it does not have jurisdiction for the subject matter of the case then it should not decide any question on merits. The aforesaid judgment is applicable to the facts of the present case to an extent. Accordingly, in view of the findings recorded in issue No.4, this Court has no jurisdiction to try and decide the present case. However, the claimant-workman is at liberty to avail the remedy before the appropriate forum under relevant provisions of law.

19. Both these issues stands decided accordingly.

Issues No. 3 & 5 :

20. Both these issues are not pressed during course of arguments. Accordingly, both these issues are decided against the management and in favour of the claimant-workman.

Relief :

21. In the view of foregoing finding on the issue No. 4 above, this industrial dispute is declined with liberty to the workman to avail the remedy before the appropriate forum under relevant provisions of law. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 03.10.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/54-HII(2)-2023/18818.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **80/2020 dated 01.09.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAM CHANDER, H.NO.108, SECTOR 38-B, CHANDIGARH (Workman)

AND

1. M/S CHANDIGARH COOPERATIVE KITCHEN GARDENING SOCIETY LTD. SECTOR 23-A, CHANDIGARH.
2. CHAIRMAN, CHANDIGARH COOPERATIVE KITCHEN GARDENING SOCIETY LTD., SECTOR 23-A, CHANDIGARH. (Management)

AWARD

1. Ram Chander, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 01.01.1997 workman was appointed as Helper by the management. The workman remained in the continuous and interrupted employment up to 02.09.2017 when his services were illegally and wrongfully terminated by refusing of work. The workman was drawing ₹ 8,787/- per month as wages. The workman was a member of the ESI scheme and was allotted ESI No.1713078369. On 03.09.2017, the workman went to attend his normal duty but he was refused work without assigning any reason and notice. There was no complaint against work & conduct of the workman from any of his colleagues or superiors. On 08.11.2016 the workman and his co-workmen lodged a joint complaint with the Labour Authorities with regard to non-payment of wages for the month of November & December, 2013 and January & February, 2014 when there was no reason to hold the wages. Reminders were also sent to management and finally a last reminder was sent on 10.02.2017. No payment has been made till date. As a result of it the management started harassing the workers on one pretext or other. The workman doing his duty earlier but he was marked absent. The refusal of work which amounts to termination is retrenchment under Section 2(o) of the ID Act. The management has also violated Section 25-F of the ID Act. No charge sheet was issued. No inquiry was held. The workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement workman served upon the management a demand notice dated 14.09.2017. The management neither replied the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention but no settlement could be made possible within stipulated period. The termination is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. The workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with full back wages along with continuity of service, without any change in service condition and all attendant benefits.

3. On notice, the managements contested the claim statement by filing written statement on 07.05.2021 wherein preliminary objection are raised on the ground that the management denies each and every statement / submission and contention set forth in the statement of claim to the extent that the same are contrary to and / or inconsistent with the true and complete facts of the case and / or submission made on behalf of the management in the present written statement. Nothing in the written statement be deemed to have been admitted by the management save and accept what is expressly and specifically admitted and the contents of the written statement unless admitted specifically by the management may be read as travesty of fact. The workman has

not approached this Court with clean hands and has suppressed the material facts in his statement of claim. This Court does not have territorial jurisdiction to try and decide the present application. Claim statement is liable to be relegated to the Court of Registrar, Cooperative Societies, U.T. Chandigarh for proper decision. The statement of claim is highly time barred. The Chandigarh Co-operative Kitchen Gardening Society, opposite Bal Bhawan, Sector 23-A, Chandigarh is registered under the Co-operative Society Act, 1961 (as applicable to U.T.) (*here-in-after in short referred as 'Act 1961'*). The Co-operative Society was registered with the Co-operative Department, U.T. Chandigarh. Section 55(1) of the Act 1961 is reproduced hereunder :-

"55. Disputes which may be referred to arbitration :-

- (1) *Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises-*
 - (a) *among members, past members and persons claiming through members, past members and deceased members; or*
 - (b) *between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or*
 - (c) *between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or*
 - (d) *between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society;*

Such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute."

No suit shall be instituted against the Co-operative Society or any of its officer in respect of any act touching the business of the Society until the expiration of three months. Section 79 of the Act, 1961 is reproduced as under :-

"79. Notice necessary in suits :-*No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the business of the society until the expiration of three months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint, shall contain a statement that such notice has been so delivered or left."*

Section 82 of the Act, 1961 as applicable to U.T. Chandigarh, the Civil Court / Revenue Court / Labour Court is barred to decide the present case. Section 82 of the Act, 1961 is reproduced as below :-

"82. Bar of jurisdiction of courts :-

- (1) *Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of -*
 - (a) *the registration of a co-operative society or its bye-laws or of an amendment of a bye-law;*
 - (b) *the removal of a committee;*
 - (c) *any dispute required under section 55 to be referred to the Registrar; and*
 - (d) *any matter concerning the winding up and the dissolution of a co-operative society.*

- (2) *While a co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against, the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.*
- (3) *Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever"*

In view of the above Sections the Civil Court is barred to entertain and decide the case law relating to Co-operative Society. Section 56(9) of Act, 1961 as applicable to Chandigarh is reproduced as below :-

"56(9) Jurisdiction of civil court:- *such a dispute has clearly to be settled by recourse to arbitration under the act and the jurisdiction of the civil courts is, therefore, clearly barred."*

No notice under Section 79 of the Act, 1961 has been issued to the management. On this ground alone the present case may be ordered to be dismissed. There is independent Court of Registrar Co-operative Society, U.T. Chandigarh and the workman should approach the Court of Registrar Co-operative Society, U.T. Chandigarh for his grievance, if any. No original paper has been attached with the evidence of the workman. Similar case titled Bidhi Singh Versus The Chandigarh Co-operative Kitchen Gardening Society Limited, Sector 23-A, Chandigarh was dismissed on 10.05.2019 on the ground that since there is an independent Court of Registrar Co-operative Society, U.T. Chandigarh and his case does not fall before the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh and his case was dismissed by this Hon'ble Court on the territorial issue.

4. Further in parawise reply it is stated that no appointment letter has been attached with the statement of claim. Further the statement of claim is hopelessly time barred and hence, deserves dismissal. Rest of the averments of claim statement are denied being false and frivolous and prayer is made that the claim filed by the workman being totally false, frivolous, misleading, not based on facts and not maintainable may be dismissed with heavy cost.

5. The workman filed rejoinder wherein the contents of written statement are denied as wrong and incorrect and averments of claim statement are reiterated. It is specifically pleaded that the Labour Court in this case is competent to adjudicate and decide the present dispute in view of the law laid down by Hon'ble Supreme Court in ***Civil Appeal No.197 of 2018 between Smt. K. A. Annamma Versus The Secretary, Cochin Co-operative Hospital Society Limited.***

6. From the pleadings of the parties following issues were framed vide order dated 15.09.2022 :-

1. Whether the termination of the workman is retrenchment under Section 2(oo) of the ID Act ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled for reinstatement with continuity of service, full back wages and all consequential benefits as prayed for ? OPW
3. Whether there is relationship of employee and employer between workman and management ? OPW
4. Whether the workman has not approached the Court with clean hands and has suppressed the material facts ? OPM
5. Whether the present Industrial Dispute is barred by jurisdiction ? OPM
6. Whether the present Industrial Dispute is time barred ? OPM
7. Relief.

7. In evidence, workman Ram Chander examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 12.04.2023 Learned Representative for the workman closed evidence in affirmative on behalf of the workman.

8. On the other hand, management examined MW1 Pritpal Singh - Manager, Chandigarh Co-operative Kitchen Gardening Society Limited, who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M2' and Exhibit 'M3'.

Exhibit 'M2' is copy of Award dated 27.09.2022 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T. Chandigarh in case titled Sher Singh Versus Chairman, Chandigarh Kitchen Gardening Co-operative Society Limited.

Exhibit 'M3' is copy of Award dated 27.09.2022 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T. Chandigarh in case titled Ujjagar Singh Versus Chairman, Chandigarh Kitchen Gardening Co-operative Society Limited.

9. It is pertinent to mention here that during cross-examination of AW1 the management put the copy of Award dated 10.05.2019 passed in case titled Bidhi Singh Versus Kitchen Gardening Cooperative Society Limited vide Exhibit 'M1'. On 01.09.2023 Learned Representative for the managements closed evidence on behalf of the management.

10. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 5 :

11. Issue No.5 is taken up first as it goes to the root of the case. Onus to prove this issue is on the management.

12. Learned Representative for the managements contended that in view of Section 55, 56(9) and 82 of the Act, 1961 the jurisdiction of the present Court is barred. To support his contention Learned Representative for management referred case law reported in **1978 Lab. I.C. 467** titled as **Bangalore Water Supply & Sewerage Board Versus A. Rajappa & Others** and argued that in view of the law laid down by the Hon'ble Supreme Court in the above referred case, the management of The Chandigarh Co-operative Kitchen Gardening Society Limited does not fall within the definition of an 'industry' as defined in Section 2(j) of the ID Act, therefore, the present Court has no jurisdiction to entertain and decide the present reference. Besides, the mandatory prior notice under Section 79 of the Punjab Co-operative Society Act has not been issued to the management.

13. On the other, Learned Representative for the workman contended that as per the latest law laid down by Hon'ble Supreme Court of India vide judgment dated 12.01.2018 in **Civil Appeal No.197 of 2018 (Arising out of S.L.P.(C) No.29765 of 2016)** titled as **Smt. K. Annamma Versus The Secretary, Cochin Co-operative Hospital Society Limited**, the appropriate Authority under the Act, 1961 and the present Court under the ID Act both possess and enjoy the concurrent jurisdiction to decide any dispute arising between the co-operative society's employee and his / her employer i.e. co-operative society.

14. To my opinion, the previous judgment of Hon'ble Supreme Court reported in **1978 Lab. I.C. 467 (supra)** shall prevail over the judgment in **Civil Appeal No. 197 of 2018 (supra)** because the previous view taken by the Hon'ble Supreme Court in **1978 Lab. I.C. 467 (supra)** is of the larger bench. As per the view of the larger bench of Hon'ble Supreme Court in **1978 Lab. I.C. 467 (supra)**, since the management does not fall within the definition of 'industry', therefore, the present Court has no jurisdiction to try and decide the present industrial dispute.

15. Furthermore, the workman failed to controvert the fact that before presenting the present reference compliance of Section 79 of the Punjab Co-operative Society Act has not been made.

16. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No.1 to 4 & 6 :

17. All these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 to 3 is the workman and onus to prove issue No.4 & 6 is on the management.

18. In view of the findings recorded on issue No.5 above, this Court has no jurisdiction and is not competent to adjudicate whether the services of the workman were terminated illegally by the management, if there is no relationship of employer & employee between the management & the workman, the workman has not approached the Court with clean hands & has suppressed the material facts and the present industrial dispute is time barred.

19. In view of judgment of *Hon'ble High Court of Punjab & Haryana passed in CWP No.18958 of 1996 titled as Ashok Khanna Versus M/s TTK Pharma Limited & Others, decided on 01.07.2009*, once this Tribunal / Court has reached to the conclusion that it does not have jurisdiction for the subject matter of the case then it should not decide any question on merits.

20. However, the workman is at liberty to avail the remedy before the appropriate forum under relevant provisions of law.

21. Both these issues stands decided accordingly.

Relief :

22. In the view of foregoing finding on the issue No. 2 above, this industrial dispute is declined with liberty to the workman to avail the remedy before the appropriate forum under relevant provisions of law. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 01.09.2023.

Secretary Labour,
Chandigarh Administration.

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."